

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-326-C – ORDER NO. 2004-88  
FEBRUARY 24, 2004

IN RE: Analysis of Continued Availability of	)	ORDER APPROVING	✓ RNC
Unbundled Local Switching for Mass	)	MOTION OF BIRCH	
Market Customers Pursuant to the Federal	)	TELECOM OF THE SOUTH,	
Communications Commission's Triennial	)	INC. FOR CONFIDENTIAL	
Review Order	)	TREATMENT OF	
	)	INFORMATION FILED	
	)	WITH THE COMMISSION	

This Order is issued to approve the Motion of Birch Telecom of The South, Inc. ("Birch") that the Public Service Commission of South Carolina ("Commission") treat Birch's responses to BellSouth Telecommunications Inc.'s First Interrogatories filed on January 7, 2003, as proprietary and confidential. Birch claims that certain information contained in its Responses is extremely sensitive to Birch.

A review of the materials in question establishes that the materials do provide detailed information concerning Birch's business and practices which are sensitive. The South Carolina Freedom of Information Act ("FOIA") allows exemption from disclosure proprietary business information that meets a definition of "trade secrets." S.C. Code Ann. Section 30-4-40(a)(1) states that matters which may be exempt from FOIA include: "(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes....Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and

marketing studies, and evaluations and other materials which contain references to potential customers, competitive information or evaluation.” We find that the information for which Birch seeks protection as proprietary or confidential falls within this definition of materials which may be exempted from disclosure under FOIA.

By Order No. 2003-729, dated December 17, 2003, the Commission provided procedures to protect materials designated confidential by the parties. However, Order No. 2003-729 addressed how the parties would treat confidential or proprietary information and did not address how the Commission would treat materials designated as confidential or proprietary. Birch’s request for confidential treatment of its responses to BellSouth’s interrogatories requests that materials designated as confidential be treated as such by the Commission.

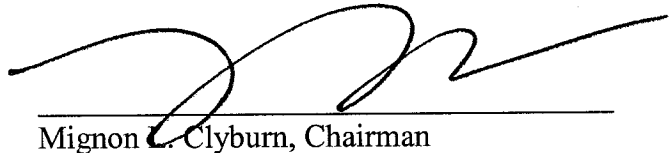
Because the Commission finds that the information filed by Birch is proprietary and meets the definition of “trade secrets” as defined under FOIA, the Commission grants the Motion of Birch. Therefore, the Commission modifies the previous Protective Order issued in this docket by specifically providing that the aforementioned information provided by Birch for filing with the Commission shall be considered proprietary and confidential and shall be subject to the same conditions and protections afforded by Order No. 2003-729, dated December 17, 2003.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:


1. Confidential and proprietary materials filed with the Commission by Birch in response to discovery requests propounded by parties in this docket shall be subject to the same conditions and protections afforded by Order No. 2003-729, dated December 17, 2003.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Mignon L. Clyburn, Chairman

ATTEST:

  
Bruce F. Duke, Executive Director

(SEAL)